REMARKS

Claims 7-9 are currently being amended to fix several typographical errors, as well as to remove vinyl esters of saturated C_2-C_{18}-carboxylic acids from component (I) from claim 7. Basis for the amendment to claim 7 to remove vinyl esters of saturated C_2-C_{18}-carboxylic acids from component (I) can be found throughout Applicant's specification, including page 4, line 7, as well as the Example. Additionally, basis for the amendment to claim 8 can be found throughout Applicant's specification, including page 4, lines 4-7.

Furthermore, new claims 13 and 14 are currently being added in which the ethylene polymer composition of component (I) consists essentially of ethylene and an ester of ethylenically unsaturated esters of unsaturated C_3-C_{20} monocarboxylic acids and C_1 to C_{24} monovalent aliphatic or alicyclic alcohols, and the polymer blend (A) consists essentially of component (I) and (II), respectively.

Thus, the amendments to the claims presented herein do not introduce new matter within the meaning of 35 U.S.C. §132. Accordingly, the Examiner is respectfully requested to enter these amendments.

1. Rejection of Claims 7 and 9 Under 35 U.S.C. §112, 2nd Paragraph

With respect to the rejections raised in paragraph 5), subparagraphs 1), 4), and 5) on page 5, line 1 - page 6, line 5 in

the instant Office Action, Applicant has amended claims 7 and 9 to obviate these rejections. As such, Applicant respectfully requests the Examiner to withdraw the aforementioned rejections.

With respect to the rejection raised in paragraph 5), subparagraph 2) on page 5, lines 10-13 in the instant Office Action, Applicant respectfully traverses the rejection. In particular, basis for the random interpolymer of propylene having a xylene-insoluble fraction at room temperature greater than 70% can be found throughout Applicant's specification, including on page 2, lines 20-21. Therefore, Applicant respectfully requests the Examiner to withdraw this rejection.

With respect to the rejection raised in paragraph 5), subparagraph 3 on page 5, lines 14-18 in the instant Office Action, Applicant respectfully traverses the rejection. In particular, claim 7 recites, in part, the polymer blend (ii) comprises (a) 80-100 **parts by weight** of a random interpolymer of ethylene with at least one CH_2=CHR α-olefin; and (b) from 5 to 30 **parts by weight** of a random interpolymer of propylene with at least one CH_2=CHR α-olefin. The Examiner states,

> The ratios between the components a) and b) do not make sense since 30 pbw of component b) will not allow to take 80-100 pbw of the compoment a).

However, Applicant respectfully believes the Examiner is confusing weight percent with parts by weight (i.e., 30 wt. % added to 100 wt.

% equals 130 wt. %, which is impossible, whereas, for example, 30 parts by weight of the propylene interpolymer can be added to 100 parts by weight of the ethylene interpolymer to give a polymer blend having a total of 130 parts by weight of interpolymers.) Accordingly, Applicant respectfully believes that by expressing the ranges in **parts by weight**, rather than in weight percent, there is nothing incongruous or indefinite about the ranges recited therein, and that the recited ranges fully comply with 35 U.S.C. 112, 2nd paragraph. As such, Applicant respectfully requests the rejection to be withdrawn.

2. Rejection of Claims 7 and 8 Under 35 U.S.C. §103(a) to U.S. Patent 4,504,434

Applicant respectfully traverses the rejection of claims 7 and 8 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 4,504,434 (herein referred to as, "Cooper, et al.").

The U.S. Supreme Court in *Graham v. John Deere Co.*, 148 U.S.P.Q. 459 (1966) held that non-obviousness was determined under §103 by (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art; and, (4) inquiring as to any objective evidence of non-obviousness.

Accordingly, for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must

be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §2142.

First and foremost, Applicant has amended claim 7 to remove vinyl esters of saturated C_2-C_{18} carboxylic acids from the ethylene polymer composition of component (I). Therefore, since Cooper, et al. discloses the compositions therein comprise between 40 to 90% by weight of a high molecular weight ethylene/vinyl acetate copolymer (EVA), Applicant respectfully believes the instant rejection should be withdrawn. See col. 2, lines 48-53 in Cooper, et al.

Additionally, Cooper, et al. discusses throughout his disclosure the criticality of the EVA component, and in fact discloses that the particular EVA component is present in a significant and critical amount (i.e., 40-90% by weight). Given vinyl esters of saturated C_2-C_{18} carboxylic acids have been removed from the ethylene polymer composition of component (I), Applicant respectfully believes Cooper, et al. clearly fails to disclose, teach, or suggest, at the very least, Applicant's currently claimed elastic film comprising polymer blend (A), wherein polymer blend (A) comprises the currently claimed ethylene polymer composition

comprising a recurring unit derived from an ester selected from (1) **ethylenically unsaturated organic monomer of esters of unsaturated C_3-C_{20} monocarboxylic acids and C_1 to C_{24} monovalent aliphatic or alicyclic alcohols**, wherein the **ester ranges from 2.5 to 8 % by weight** based on a total weight of the ethylene polymer composition; the ethylene polymer composition having a density ranging from 0.920 to 0.935 g/mL. Moreover, given the criticality of the EVA component in Cooper, et al., Applicant respectfully believes one of ordinary skill in the art would not have removed the EVA component from Cooper, et al. in an attempt to modify the disclosure of Cooper, et al. to arrive at Applicant's currently claimed elastic films. However, this is the Examiner's initial burden to establish a *prima facie* case of obviousness. See MPEP §2142.

For the reasons outlined above, Applicant respectfully believes the instant rejection should be withdrawn. As such, Applicant respectfully requests the Examiner to reconsider and withdraw the currently pending rejection to Cooper, et al.

3. Rejection of Claims 7 and 8 Under 35 U.S.C. §102(a)/103(a) and 35 U.S.C §102(e)/103(a) to U.S. Patent Application Publication 2003/0044551

Applicant respectfully traverses the rejection of claims 7 and 8 under 35 U.S.C. §102(a) as being anticipation by, or in the

alternative under §103(a) as being unpatentable over U.S. Patent Application Publication 2003/0044551 (herein referred to as, "Glick, et al."), as well as under 35 U.S.C. §102(e) as being anticipation by, or in the alternative under §103(a) as being unpatentable over Glick, et al. For the sake of brevity, both rejections (i.e., 35 U.S.C. §102(a)/103(a) and 35 U.S.C. §102(e)/103(a)) will be discussed in this section.

As long-settled, for a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claims is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. V. Union Oil Co. of California,* 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.,* 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must also be arranged as required by the claim. *In re Bond,* 15 USPQ2d 1566 (Fed. Cir. 1990).

Additionally, as discussed *supra*, the U.S. Supreme Court in *Graham v. John Deere Co.*, 148 U.S.P.Q. 459 (1966) held that non-obviousness was determined under §103 by (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims at issue; (3) resolving the level of ordinary skill in the art; and, (4) inquiring as to any

objective evidence of non-obviousness.

Accordingly, for the Examiner to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §2142.

As discussed above with respect to Cooper, et al., Applicant has amended claim 7 to remove vinyl esters of saturated C_2-C_{18} carboxylic acids from the ethylene polymer composition of component (I). Therefore, since Glick, et al. discloses the compositions therein comprise two layers (i.e., a top and bottom layer) of a high molecular weight ethylene/vinyl acetate copolymer (EVA), Applicant respectfully believes for this reason alone the instant rejections should be withdrawn. See paragraph [0008] in Glick, et al.

Additionally, as with Cooper, et al., Glick discusses throughout the disclosure the criticality if the two EVA layers. In addition to paragraph [0008] in Glick, et al., the Examiner is directed to paragraphs [0016] and [0017] in Glick, et al. as well. Given vinyl esters of saturated C_2-C_{18} carboxylic acids have been removed from the ethylene polymer composition of component (I),

Applicant respectfully believes Glick, et al. clearly fails to disclose, teach, or suggest, at the very least, Applicant's currently claimed elastic film comprising polymer blend (A), wherein polymer blend (A) comprises the currently claimed ethylene polymer composition comprising a recurring unit derived from an ester selected from (1) **ethylenically unsaturated organic monomer of esters of unsaturated C_3-C_{20} monocarboxylic acids and C_1 to C_{24} monovalent aliphatic or alicyclic alcohols**, wherein the **ester ranges from 2.5 to 8 % by weight** based on a total weight of the ethylene polymer composition; the ethylene polymer composition having a density ranging from 0.920 to 0.935 g/mL.

Moreover, given the criticality of the EVA layers in Glick, et al., Applicant respectfully believes one of ordinary skill in the art would not have removed the EVA layers from Glick, et al. in an attempt to modify the disclosure of Glick, et al. to arrive at Applicant's currently claimed elastic films. However, this is the Examiner's initial burden to establish a *prima facie* case of obviousness. See MPEP §2142. Therefore, for the reasons outlined above, Applicant respectfully believes the instant rejection should be withdrawn.

Notwithstanding, Glick, et al. also discloses the ethylene-based copolymer also comprises 1 to 30% by weight of arylic acid or methacrylic acid, with 5 to 100% of the acid groups neutralized with metal ions. See paragraph [0011] and [0013] in Glick, et al. In

particular, Glick, et al. discloses the criticality of the arylic acid or methacrylic acid by stating in paragraphs [0028]-[0030],

> [0028] Typical ethylene based copolymers used in the inner layer of the film of this invention are ethylene/**acid** copolymers and ethylene/**acid**/ alkyl(meth)acrylate copolymers **containing 1-30% by weight, preferably 7-25% by weight of polymerized acid monomers such as acrylic acid or methacrylic acid.** Generally, polymers having an acid content above 30% by weight are not made.
>
> [0029] These ethylene based copolymers contain at least 50% of polymerized ethylene, **1 to 30% by weight of a polymerized acid constituent such as acrylic or methacrylic acid** and 0 to 40% by weight of a polymerized alkyl (meth)acrylate. Particularly useful are ethylene/**acid** copolymers containing 75-93% by weight ethylene and **7-25% by weight of acrylic acid or methacrylic acid**, such as an ethylene (88%)/**methacrylic acid (12%) copolymer**, an ethylene (81%)/**methacrylic acid (19%) copolymer**, an ethylene (85%)/**methacrylic acid (15%) copolymer** and an ethylene(80%)/**acrylic acid (20%) copolymer**.
>
> [0030] Other useful copolymers contain at least 50% and preferably, 65 to 85% by weight polymerized ethylene, **7 to 25% by weight acrylic or methacrylic acid** and 1-30% by weight of an alkyl (meth)acrylate. Typically, such copolymers contain butyl acrylate or butyl methacrylate but other (meth)acrylates can be used such as methyl, ethyl and propyl (meth)acrylates. Typical of such copolymers are ethylene/**methacrylic acid**/n-butyl acrylate having a weight ratio of components of 67.5/**9**/23.5. (Emphasis added)

Accordingly, Glick, et al. clearly outlines the criticality of the acrylic acid or methacrylic acid in the films described therein, as they are preferably present in substantial amounts (i.e. 7-25% by weight), whereas the alkyl acrylate or alkyl methacrylate does not

have to be present (i.e., can be 0% by weight; see paragraph [0029], line 4 in Glick, et al.). As such, Applicant respectfully believes one skilled in the art would not have removed the critical acrylic acid or methacrylic acid from the films of Glick, et al. to try and arrive at Applicant's currently claimed elastic films.

Furthermore, Applicant respectfully believes Glick, et al. fails to disclose, teach, or suggest Applicant's specifically claimed ester content in component (I) (i.e., from 2.5 to 8% by weight). In fact, as noted above, Glick, et al. generally discloses the alkyl acrylate or alkyl methacrylate does not have to be present, with the only specific example given in Glick being in paragrapgh [0030] in which the n-butyl acrylate is present at 23.5% by weight, which is clearly much higher than the range currently claimed by Applicant. As such, Applicant respectfully believes not only does Glick, et al. not disclose, teach, or suggest Applicant's specifically claimed ester content in component (I), but Applicant respectfully believes one of ordinary skill in the art would not have been motivated to modify Glick, et al. to try and arrive at Applicant's currently claim ester range. However, this is the Examiner's intital burden to establish a *prima facie* case of obviousness. See MPEP §2142.

For the reasons outlined above, Applicant respectfully believes the instant rejections should be withdrawn. As such, Applicant respectfully requests the Examiner to reconsider and withdraw the

currently pending rejections to Glick, et al.

4. Rejection of Claims 10-12 Under 35 U.S.C. §103(a) to Cooper, et al. in view of WO 95/20009

Applicant respectfully traverses the rejection of claims 10-12 under 35 U.S.C. §103(a) as being unpatentable over Cooper, et al. in view of WO 95/20009 (herein referred to as, "Govoni, et al.").

Arguments *supra* regarding Cooper, et al. are incorporated herein by reference in their entirety. With respect to claims 10-12, all of the aforementioned claims depend directly from claim 7, and as such, necessarily include all of the limitations therein.

Additionally, Applicant respectfully believes Govoni, et al. does not remedy the deficiencies of Cooper, et al. as discussed above. In particular, Applicant respectfully believes Cooper, et al. alone, or in view of Govoni, et al. fails to disclose, teach, or suggest, at the very least, Applicant's currently claimed elastic film comprising polymer blend (A), wherein polymer blend (A) comprises the currently claimed ethylene polymer composition comprising a recurring unit derived from an ester selected from (1) **ethylenically unsaturated organic monomer of esters of unsaturated C_3-C_{20} monocarboxylic acids and C_1 to C_{24} monovalent aliphatic or alicyclic alcohols**, wherein the **ester ranges from 2.5 to 8 % by weight** based on a total weight of the ethylene polymer composition;

the ethylene polymer composition having a density ranging from 0.920 to 0.935 g/mL.

For the reasons outlined above, Applicant respectfully believes the instant rejection should be withdrawn. As such, Applicant respectfully requests the Examiner to reconsider and withdraw the currently pending rejection to Cooper, et al. in view of Govoni, et al.

5. Rejection of Claims 7-11 to Claims 1-3 and 7 in Co-Pending Application Serial No. 10/557,297

Applicant submits herewith this response a Terminal Disclaimer to co-pending U.S. Patent Application Serial No. 10/557,297. Accordingly, Applicant respectfully believes the instant rejection should be withdrawn.

CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw the objection and rejection, and allow all pending claims 7-14. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned

practitioner if she has any questions or comments.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on June 24, 2009.

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June 24, 2009
Date